PUBLIC CHAPTER NO. 1079

SENATE BILL NO. 4208

By Kyle, Roller, Ford, Marrero

Substituted for: House Bill No. 4207

By Favors, Odom

AN ACT to amend Tennessee Code Annotated, Title 56, Chapters 7 and 8, relative to the regulation of unfair trade practices and unfair claims settlement practices in the business of insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 8, is amended by deleting Part 1 in its entirety and by substituting instead Sections 2 through 13 of this act as a new Part 1.

SECTION 2. This act shall be known and may be cited as the "Tennessee Unfair Trade Practices and Unfair Claims Settlement Act of 2009". The purpose of this act is to regulate trade and claims settlement practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress) and the Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress), by defining, or providing for the determination of, all such practices in this state that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices and claim settlement practices so defined or determined. Notwithstanding any other provision of state law to the contrary, the commissioner shall have sole enforcement authority for this act, and nothing herein shall be construed to create or imply a private cause of action for a violation of this act.

SECTION 3. For the purposes of this act:

(1) "Adjuster" means any person that is adjusting claims;

(2) "Affiliate of a depository institution" means any company that controls, is controlled by, or is under common control with a depository institution;

(3) "Claim" means:

(A) An oral, written, or electronic submission for payment that is filed by an insured, on behalf of an insured, or by a third party where the insurer accepts such claims, in accordance with the insurer's reasonable submission standards; and

(B) Is sufficient to reasonably establish contractual liability for payment on the part of an insurer.

For the purposes of Section 6, a "claim" does not mean an inquiry by an insured as to the existence of coverage or how a potential claim may affect future premiums or renewability of coverage;

(4) "Commissioner" means the Commissioner of Commerce and Insurance;

(5) "Customer", for purposes of Section 7, means an individual who purchases, applies to purchase, or is solicited to purchase insurance products;

(6) "Depository institution" means a bank or savings association. The term depository institution does not include an insurance company;

(7) "Fictitious grouping" means any grouping by way of membership, nonmembership, license, franchise, employment, contract, agreement or any other method or means;

(8) "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy;

(9) "Insurer" means any person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, hospital medical service corporations, dental, optometric and other similar health service plans. For purposes of this act, these foregoing entities shall be deemed to be engaged in the business of insurance;

(10) "Person" means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts, corporations, insurance producers, adjusters, any employer to the extent that such employer self-insures its workers' compensation liabilities pursuant to § 50-6-405(b) or a group of employers qualifying as self-insurers pursuant to § 50-6-405(c), or third party administrators;

(11) "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer;

(12) "Producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance under Title 56, Chapter 6, Part 1; and

(13) "Third party administrator" means any person that collects charges or premiums from, or who adjusts or settles claims on, residents of this state on behalf of an insurer, and shall include any person currently

defined as an "administrator" by § 56-6-401, any person currently defined as an "administrator" by Tenn. Comp. R. & Regs. 0780-1-54, or any person currently defined as "third-party administrator" by Tenn. Comp. R. & Regs. 0780-1-81.

The Federal Employee Retirement Income Security Act (ERISA) preempts certain entities and some activities of those entities from the application of state laws. The purpose of these definitions is to include within this act and rules promulgated pursuant to this act, all entities and activities to the extent not preempted by ERISA.

SECTION 4. No person shall engage in an unfair trade practice from, in, or into this state which is defined in Sections 5 or 7 of this act or determined by rule pursuant to Section 9 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. No person shall engage in an unfair claim practice which is defined in Section 6 of this act or determined by rule pursuant to Section 9 to be an unfair claim practice. However, the commissioner may not levy a civil penalty or suspend or revoke a license for violating an unfair claim practice unless:

(a) It is committed knowingly; or

(b) It has been committed with such frequency as to indicate a general business practice.

SECTION 5. The following practices are hereby defined as unfair trade practices in the business of insurance by any person:

(a) Misrepresentations and False Advertising of Insurance Policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(1) Misrepresents the benefits, advantages, conditions or terms of any policy;

(2) Misrepresents the dividends or share of the surplus to be received on any policy;

(3) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy;

(4) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(5) Uses any name or title of any policy or class of policies misrepresenting the true nature thereof;

(6) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending

to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy;

(7) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(8) Misrepresents any policy as being shares of stock;

(b) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading;

(c) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer;

(d) Boycott, Coercion and Intimidation.

(1) Entering into any agreement to commit, or by any concerted action committing, any act or boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in, the business of insurance; or

(2) By any act of boycott, coercion or intimidation, monopolizing or attempting to monopolize any part of the business of insurance, provided that nothing in this subdivision shall be interpreted as defining or determining as an unfair method of competition or any unfair or deceptive act or practice in the business of insurance any act of boycott, coercion or intimidation on the part of any person, unless such act is committed in connection with an intention on the part of such person to monopolize, or attempt to monopolize, any material part of the business of insurance; and provided further, that no insurance company shall be held to have violated the provisions of this subdivision because of any act of a producer of that company, which act has not been authorized or approved or acquiesced in by the company;

(e) False Statements and Entries.

(1) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer;

(2) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, or knowingly making any false material statement to any insurance department official;

(f) Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to purchase insurance;

(g) Unfair Discrimination.

(1) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy;

(2)(A) Refusing life insurance to, refusing to continue life insurance of, or limiting the amount, extent, or kind of life insurance coverage available to an individual based on the individual's past lawful travel experiences; or

(B)(i) Refusing life insurance to, refusing to continue life insurance of, limiting the amount, extent, or kind of life insurance available to an individual, or determining the premium of life insurance based on the individual's future lawful travel plans unless:

(*a*) The risk of loss for individuals who travel to a specified destination at a specified time is reasonably anticipated to be greater than if the individuals did not travel to that destination at that time; and

(*b*) The risk classification is based on sound actuarial principles and actual or reasonably anticipated experience.

(ii) An action shall be deemed to meet the requirements for exemption under subdivision (i) if it is taken because either one (1) of the following is true with respect to the travel destination:

(*a*) The Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services has issued alerts or warnings regarding serious health-related conditions or an epidemic or pandemic alert or response; or

(*b*) There is an ongoing armed conflict involving the military of a sovereign nation foreign to the destination.

(C)(i) The commissioner is authorized to promulgate rules necessary to implement the provisions of this subdivision (g)(2) and is authorized to provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.

(ii) An insurer shall make any pertinent underwriting guidelines and supporting analyses available to the commissioner on request;

(3) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner;

(4) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience;

(5) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property;

(6) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, race, religion, national origin, marital status, income, or educational background of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits and nothing shall prohibit price distinctions between persons pursuant to underwriting and actuarial principles;

(7) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to medical malpractice insurance or accident and health insurance sold by a casualty insurer and, provided further, that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract; or

(8) Refusing to insure solely because another insurer has refused to write a policy, or has canceled or has refused to renew an existing policy in which that person was the named insured. Nothing herein contained shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance;

(h) Rebates.

(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any policy of insurance, including, but not limited to, any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

(2) Nothing in subsection (g) or subsection (h)(1) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(C) Readjusting the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or

(D) Offering a child passenger restraint system or a discount in premium equal to the amount of the purchase price of a child passenger restraint system to policyholders, when the purpose of such restraint system is the safety of a child and complies with § 55-9-602;

(i) Prohibited Group Enrollments. No insurer shall offer more than one (1) group policy of insurance through any person unless such person is licensed, at a minimum, as a limited lines producer. However, this prohibition shall not apply to employer/employee relationships, nor to any such enrollments;

(j) Failure to Maintain Marketing and Performance Records. Failure of an insurer to maintain its books, records, documents and other business records in such an order that data regarding claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained;

(k) Failure to Maintain Complaint Handling Procedures. Failure of any insurer to maintain a complete record of all the complaints it received since the date of its last examination under § 56-1-408. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subsection, "complaint" means a written communication expressing dissatisfaction or disagreement with the decision or action of an insurer; provided, however, that a communication submitted as part of the insurer's usual and customary claims process shall not be considered as a complaint;

(l) Misrepresentation in Insurance Applications. Making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any provider or individual person;

(m) Failure to File or to Certify Information Regarding the Endorsement or Sale of Long-term Care Insurance. Failure of any insurer to:

(1) File with the insurance department the following material:

(A) The policy and certificate;

(B) A corresponding outline of coverage; and

(C) All advertisements requested by the insurance department; or

(2) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by rule;

(n) Failure to Provide Claims History.

(1) Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured's written request:

(A) On all claims, date and description of occurrence, and total amount of payments; and

(B) For any occurrence not included in subdivision (A) of this subdivision (1), the date and description of occurrence;

(2) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under subdivision (1), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subdivision to the first named insured as soon as possible, but in no event later than twenty (20) days of receipt of the written request. Notwithstanding any other provision of this section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an

applicant solely because the prospective insurer is unable to obtain loss reserve information;

(3) The commissioner is authorized to promulgate rules to exclude the providing of the loss information as outlined in subdivision (1) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance, or where the provision of loss information otherwise is required by law;

(4) Information provided under subdivision (2) shall not be subject to discovery by any party other than the insured, the insurer and the prospective insurer;

(o) Unfair Replacement Transaction Practices. Replacing a life insurance policy or an annuity contract in a manner contrary to rules promulgated by the commissioner pursuant to this part;

(p) Unfair Utilization of Proprietary Information. With respect to any policy of insurance underwritten in a pool, residual market mechanism, joint underwriting authority or assigned risk plan, any information contained in a policy application or obtained in the servicing of such a policy of insurance cannot be used in any manner by the servicing carrier or its representatives for the purpose of soliciting any form of insurance, except when permission to use such information is granted by the commissioner on any specific risk;

(q) Changing Classification and Rate After Policy Expiration or Renewal. With respect to commercial risk insurance, making a change in the classification or rates either more than one (1) year after the policy's renewal date or the expiration date if the policy was not renewed without the written consent of the insured, provided that no consent is necessary if the change is in the favor of the insured. This provision does not apply where the insured has failed to cooperate, given misleading information, or made material misrepresentations or omissions;

(r) Preferences or Distinctions in Certain Insurance Transactions prohibited.

(1) Making, offering to make, or permitting any preference or distinction in property, marine, casualty, or surety insurance as to form or policy, certificate, premium, rate, benefits, or conditions of insurance, based upon membership, nonmembership, or employment of any person or persons by or in any particular group, association, corporation, or organization, or making such preference or distinction available in any event based upon any fictitious grouping of persons;

(2) The restrictions and limitations of this subsection do not extend or apply to life, health and accident, disability or workers' compensation insurance or to plans to provide legal services.

Nothing in this subsection shall apply to any domestic company which confines its insurance business and operations to this state and to the providing of insurance solely for the benefit of its members, or members of its parent or sponsoring organization;

(3) Notwithstanding any other provision of this title, dues paid before or after March 22, 1996, to a nonprofit association, membership in which entitles the members to apply for insurance from insurance companies described in subdivision (2), shall not be considered as gross premium or consideration for insurance;

(4) Notwithstanding any other provision of this title to the contrary, an insurer may make, offer to make, or permit a preference or distinction in property, marine, casualty or surety insurance as to form or policy, certificate, premium, rate, benefits or conditions of insurance based upon membership in an association of professionals with more than five thousand (5,000) dues-paying members in Tennessee with members residing or practicing in at least eighty (80) counties within the state;

(s) Disclosure of Nonpublic Personal Information.

(1) Disclosing nonpublic personal information contrary to the provisions of Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, or violating a rule lawfully promulgated hereunder;

(2) The commissioner shall not impose civil penalties against, or revoke or suspend the license of, a person who violates this subsection unless the violator intentionally violated this subsection or committed violations of this subsection in sufficient number as to indicate a lack of the use of due diligence on the part of the violator in complying with this subsection. For purposes of this subsection, "nonpublic personal information" means nonpublic personal information as defined in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102. For purposes of this subsection, "person" means an entity or individual holding or required by law to hold a certificate of authority or license, or the functional equivalent thereof, under the Tennessee insurance law, Title 56;

(3) Any rules promulgated pursuant to this subsection shall be no more restrictive than Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102;

(t) False, Misleading, Deceptive or Unfair Practices Concerning Sales to Members of the Armed Forces. Notwithstanding any other provision in this title, the commissioner shall have the authority to adopt such rules to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring

certain identified practices to be false, misleading, deceptive or unfair; and

(u) Unauthorized Use of Lender Information. It is unlawful for any person to make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over the Internet or any radio or television, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the sale, distribution, offering for sale or advertising of any loan, refinance, insurance or any other product or service that is untrue, deceptive, or misleading. For purposes of this section, "lender" means any bank, savings and loan association, savings bank, trust company, credit union, industrial loan and thrift company, mortgage company, mortgage broker, or any subsidiary or affiliate thereof.

SECTION 6. Any of the following acts by an insurer or person constitutes an unfair claims practice:

(a) Knowingly misrepresenting relevant facts or policy provisions relating to coverages at issue;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(d) Except when the prompt and good faith payment of claims is governed by more specific standards, not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;

(e) Compelling insureds or beneficiaries to a life insurance contract to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them; provided, that equal consideration shall be given to the relationship between the amount claimed and the amounts ultimately recovered through litigation or other valid legal arguments;

(f) Refusing to pay claims without conducting a reasonable investigation except when denied because of an electronic submission error by the claimant;

(g) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(h) Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was

entitled by reference to written or printed advertising material accompanying or made part of an application, provided this paragraph does not apply to settlement of, or attempts to settle, claims by third-party claimants;

(i) Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;

(j) Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made. Nothing in this paragraph shall be construed to require specific coverage identification for payments made to meet urgent needs of an insured, provided the insured at or before the final settlement of the claim receives a written explanation indicating the coverage or coverages under which the payments are made;

(k) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form. Nothing contained herein shall be construed as obligating any insurer to make a decision upon any claim without sufficient investigation and information to determine if such claim, or any part thereof, is false, fraudulent, or for an excessive amount;

(l) Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions. Nothing contained herein shall be construed as obligating any insurer to make a decision upon any claim without sufficient investigation and information to determine if such claim, or any part thereof, is false, fraudulent, or for an excessive amount. Further, this paragraph shall not apply to denials of, or offers of compromise settlement of, third-party claims;

(m) In response to a request for claims forms, failing to provide forms necessary to present claims within fifteen (15) calendar days of such a request with reasonable explanations regarding their use;

(n) If the insurer owns a repairer or requires a repairer to be used, the insurer's failure to adopt and implement reasonable standards to assure that the repairs are performed in a workmanlike manner; or

(o) Failing to make payment of workers' compensation benefits as such payment is required by the Commissioner of the Department of Labor and Workforce Development or by Title 50, Chapter 6.

SECTION 7. (a) No person or depository institution, or affiliate of a depository institution shall require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a

particular insurer or group of insurers or agent or broker or group of agents or brokers. Further, no person or depository institution, or affiliate of a depository institution, shall reject an insurance policy solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or extension of credit. However, nothing herein shall be construed as prohibiting engaging in an arrangement that would not violate § 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C. § 1972), as interpreted by the Board of Governors of the Federal Reserve System, or § 5(q) of the Home Owners' Loan Act (12 U.S.C. § 1464(q)).

(b) No person or depository institution, or affiliate of a depository institution, who lends money or extends credit shall:

(1) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, require that a customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer or producer. However, this provision does not prohibit a person or depository institution, or affiliate of a depository institution, from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, or that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the person or depository institution, or affiliate of a depository institution;

(2) Unreasonably reject a policy furnished by the customer or borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of a policy because it contains coverage in addition to that required in the credit transaction;

(3) Require that any customer, borrower, mortgagor, purchaser, insurer, broker or insurance producer pay a separate charge, in connection with the handling of any policy required as security for a loan on real estate, or pay a separate charge to substitute the policy of one (1) insurer for that of another. This subdivision does not include the interest that may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document. Further, this subdivision does not apply to charges that would be required when the person or depository institution or affiliate of a depository institution is the licensed producer providing the insurance;

(4) Require any procedures or conditions of duly licensed producers or insurers not customarily required of those producers or insurers affiliated or in any way connected with the person who lends money or extends credit;

(5) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state is responsible for the insurance sales activity of, or stands behind the credit of, the person, depository institution or its affiliate;

(6) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state guarantees any returns on insurance products or is a source of payment on any insurance obligation of or sold by the person, depository institution or its affiliate;

(7) Act as a producer unless properly licensed in accordance with § 56-6-103;

(8) Pay or receive any commission, brokerage fee or other compensation as a producer, unless the person holds a valid producer's license for the applicable class of insurance. However, in addition to any other manner of compensation otherwise allowed by law, an unlicensed person may make a referral to a licensed producer provided that the person does not discuss specific insurance policy terms and conditions. Except as prohibited by federal law, the unlicensed person may be compensated for the referral. However, an unlicensed person who is neither employed by nor affiliated with the insurance producer may be compensated only if the compensation is a fixed dollar amount, not to exceed twenty-five dollars ($25) or such lesser amount as the commissioner may establish by rule, for each referral. An unlicensed person who is either employed by or affiliated with the insurance producer may be compensated only if the compensation is a fixed nominal dollar amount. Furthermore, any person who accepts deposits from the public in an area where such transactions are routinely conducted in the depository institution may receive for each customer referral no more than a one-time, nominal fee of a fixed dollar amount for each referral. In any event, the referral compensation shall not depend on whether the referred customer purchases an insurance product from the licensed producer;

(9) Solicit or sell insurance, other than credit insurance or flood insurance, unless the solicitation or sale is completed through documents separate from any credit transactions;

(10) Include the expense of insurance premiums, other than credit insurance premiums or flood insurance premiums, in

the primary credit transaction without the express written consent of the customer;

(11) Solicit or sell insurance unless its insurance sales activities are, to the extent practicable, physically separated from areas where retail deposits are routinely accepted by depository institutions; or

(12) Solicit or sell insurance unless it maintains separate and distinct books and records relating to the insurance transactions, including all files relating to and reflecting consumer complaints.

(c) Every person or depository institution, or affiliate of a depository institution that lends money or extends credit and who solicits insurance primarily for personal, family or household purposes shall disclose to the customer in writing that the insurance related to the credit extension may be purchased from an insurer or producer of the customer's choice, subject only to the lender's right to reject a given insurer or agent as provided in subdivision (b)(2). Further, the disclosure shall inform the customer that the customer's choice of insurer or producer will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and the scope of coverage chosen as provided in subdivision (b)(2).

(d)(1) A depository institution that solicits, sells, advertises or offers insurance, and any person who solicits, sells, advertises or offers insurance on behalf of a depository institution or on the premises of a depository institution shall disclose to the customer in writing, where practicable and in a clear and conspicuous manner, prior to a sale, that the insurance:

(A) Is not a deposit;

(B) Is not insured by the Federal Deposit Insurance Corporation or any other federal government agency;

(C) Is not guaranteed by the depository institution, its affiliate (if applicable) or any person that is soliciting, selling, advertising or offering insurance (if applicable); and

(D) Where appropriate, involves investment risk, including the possible loss of value.

(2) For purposes of these requirements, an affiliate of a depository institution is subject to these requirements only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a depository institution or on behalf of a depository institution. These requirements apply only when an individual purchases, applies to purchase, or is solicited to

purchase insurance products or annuities primarily for personal, family or household purposes and only to the extent that the disclosure would be accurate.

(3) A depository institution that solicits, sells, advertises or offers insurance, and any person who solicits, sells, advertises or offers insurance on behalf of a depository institution or on the premises of a depository institution shall obtain written acknowledgement of the receipt of the disclosure from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy. If the solicitation is conducted by telephone, the person or depository institution shall obtain an oral acknowledgement of receipt of the disclosure, maintain sufficient documentation to show that the acknowledgement was given by the customer, and make reasonable efforts to obtain a written acknowledgement from the customer. If a customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the customer may retain or obtain later, the person or depository institution may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.

(4) For the purposes of subdivision (1), a person is selling, soliciting, advertising or offering insurance on behalf of a depository institution, whether at an office of the depository institution or another location, if at least one (1) of the following applies:

(A) The person represents to the customer that the sale, solicitation, advertisement or offer of the insurance is by or on behalf of the depository institution;

(B) The depository institution refers a customer to the person who sells insurance and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral; or

(C) Documents evidencing the sale, solicitation, advertisement or offer of insurance identify or refer to the depository institution.

(e) The commissioner shall have the power to examine and investigate those insurance activities of any person, depository institution, affiliate of a depository institution or insurer that the commissioner believes may be in violation of this section. The person, depository institution, affiliate of a depository institution or insurer shall make its insurance books and records available to the commissioner and the commissioner's staff for inspection upon reasonable notice.

(f) Nothing herein shall prevent a person or depository institution, or affiliate of a depository institution, who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

SECTION 8. (a) The commissioner shall have power to examine and investigate the affairs of every person or insurer in this state in order to determine whether such person or insurer has been or is engaged in any unfair trade practice. However, in the case of depository institutions, the commissioner shall have the power to examine and investigate the insurance activities of depository institutions in order to determine whether the depository institution has been or is engaged in any unfair trade practice prohibited by this act. The commissioner shall notify the appropriate federal or state banking agencies of the commissioner's intent to examine or investigate a depository institution and advise the appropriate federal or state banking agencies of the suspected violations of state law prior to commencing the examination or investigation. No person shall be compelled to provide a document or disclose information that is privileged under statutory or common law.

(b) In the conduct of an examination, the criteria as set forth in the *Market Conduct Examiners Handbook* adopted by the National Association of Insurance Commissioners that was in effect when the commissioner exercised discretion to make an examination under or to take other action permitted by this act shall be used. The commissioner may by rule also employ such other guidelines or procedures as the commissioner deems appropriate. Nothing in the *Market Conduct Examiners Handbook* nor any other examination procedures or guidelines adopted by rule shall be construed to make any act or omission an unfair trade or unfair claims settlement practice unless such act or omission is otherwise defined as an unfair trade or unfair claims settlement practice under this act or is established to be so pursuant to Section 9 of this act. Findings against an insurer or recommendations for corrective action to an insurer that result from the above-referenced examination procedures or guidelines require affirmative action or response from an insurer only when a corresponding state or federal law specifically requires such action or response by an insurer.

(c) All testimony, documents and other information submitted to the commissioner pursuant to this section, and all records and documents maintained pursuant to this section shall be privileged and shall not be disclosed pursuant to § 10-7-503 or § 56-1-602, nor shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within the commissioner's discretion, may share such documents and information with other state or federal agencies, or with any law enforcement authority.

SECTION 9. (a) In addition to any other authority granted in this act, the commissioner shall have the authority to declare by rule certain acts to be unfair trade practices or unfair methods of competition or unfair or

deceptive acts or practices in the business of insurance that are not specifically defined in this act. The commissioner may promulgate such rules by public necessity upon making a finding that such is in the public interest.

(b) The commissioner, at the rule-making hearing, may administer oaths, and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence or other documents the commissioner deems relevant to the inquiry; provided, however, that in the case of depository institutions, the commissioner shall have the power to require the production of books, papers, records, correspondence or other documents that the commissioner deems relevant to the inquiry only on the insurance activities of the depository institution. No person shall be compelled to provide a document or disclose information that is privileged under statutory or common law. The commissioner may, and upon the request of any party, shall cause to be made a stenographic record of all the evidence and all the proceedings at the hearing. In case of a refusal of any person to comply with any subpoena or to testify with respect to any matter concerning which he may be lawfully interrogated, the chancery court of Davidson County or the county where the person resides, on application of the commissioner, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any order of the court may be punished by the court as contempt.

SECTION 10. Whenever it appears to the commissioner that any person has violated or is about to violate this act, or any rule promulgated thereunder, the commissioner may, in the commissioner's discretion, bring an action in the chancery court of Davidson County to enjoin such violation and to enforce compliance with this act or any rule hereunder or any order lawfully entered pursuant to this section. The court shall not require the commissioner to post a bond.

SECTION 11. The commissioner is authorized, after notice and hearing, to promulgate reasonable rules and orders as are necessary or proper to carry out and effectuate the provisions of this act. Such rules shall be subject to review in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 12. The powers vested in the commissioner by this act shall be additional to any other powers in Title 56 to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

SECTION 13. If any provision of this act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of this act, and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 14. Tennessee Code Annotated, Title 56, Chapter 7, Part 1, is amended by adding the following as a new, appropriately designated section:

§ 56-7-1__.

(a) In any action in which a person has made any payments to or on behalf of any claimant prior to trial, such payments shall not be construed as an admission of liability by such person in any action brought to recover for personal injuries or for damage to property.

(b) In the event, however, that such action results in a verdict in favor of the claimant, the defendant shall be allowed to introduce evidence of such payments and the court shall then reduce the amount awarded to the plaintiff by the amount of payments made prior to the date of judgment.

(c) No such payments made by any insurance company shall be construed to be in lieu of or in addition to any limits of liability of such insurance company under any policy of insurance, but such sums paid in advance shall be deemed to have been made pursuant to the limits of the policy and shall be credited to the insurer's obligation to the insured arising from such policy and shall be deducted therefrom.

(d) The making of any advance payments shall not interrupt the running of the statute of limitations on any claim.

SECTION 15. For the purpose of promulgating rules, including public necessity rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2009, the public welfare requiring it.

PASSED: May 13, 2008

RON RAMSEY
SPEAKER OF THE SENATE

JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of May 2008

PHIL BREDESEN, GOVERNOR